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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

PETRU MIRONESCU,

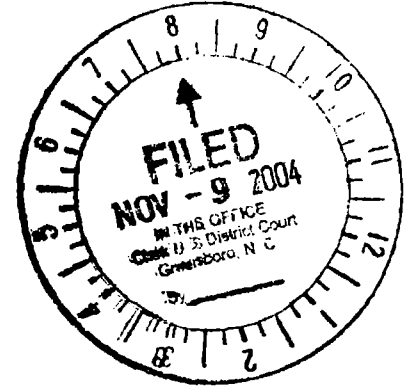
Petitioner,

v.

HARLON E. COSTNER, United States  
Marshal for the Middle District of North  
Carolina, and WILLIAM SCHATZMAN,  
Sheriff of Forsyth County,

Respondents.

1:04CV0022



ORDER

BEATY, District Judge.

On April 12, 2004, in accordance with 28 U.S.C. § 636(b), the Recommendation of the United States Magistrate Judge was filed and notice was served on the parties in this action and a copy was given to the Court.

Within the time limitation set forth in the statute, Petitioner objected to the Recommendation.

The Court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a *de novo* determination which is not fully in accord with the Magistrate Judge's report. The Court hereby adopts in part and denies in part the Magistrate Judge's Recommendation.

The Court adopts the Magistrate Judge's finding that Petitioner's certification for extradition is valid and the extradition treaty between the United States and Romania does apply. Furthermore, the Court agrees that within the narrow habeas review allowed by the Fourth Circuit of extradition certification, no review is presently allowed to consider Petitioner's evidence of a violation of Article

3 of the United Nations Convention Against Torture.<sup>1</sup> Rec. of. U.S. Magistrate Judge Dixon at 8, citing to Prushinowski v. Samples, 734 F.2d 1016, 1018 (4th Cir. 1984). See also Sandhu v. Burke, No. 97 Civ. 4608(JGK), 2000 WL 191707, at \*10 (S.D.N.Y. Feb. 10, 2000) (“[T]he Court of Appeals, through reaffirmation of the rule of non-inquiry, has made unmistakably clear that this [c]ourt may not consider evidence such as that urged upon the [c]ourt by the petitioners. It is to the Secretary of State that the petitioners must address their humanitarian arguments sounding in international law.”)

Furthermore, the Court disagrees with and hereby rejects the Magistrate Judge’s Recommendation, in so far as it goes beyond the question presently before this Court, which is whether to accept the Magistrate Judge’s certification of extradition. Magistrate Judge Dixon ruled that Petitioner would be able to re-file his habeas petition, after the Secretary of State makes a determination as to whether to extradite Petitioner, on the question of whether the Secretary’s determination violates Article 3 of the Convention Against Torture. In making that recommendation, Magistrate Judge Dixon relied primarily on Cornejo-Barreto v. Seifert, 218 F.3d 1004 (9th Cir. 2000), which was overturned by a panel of the Ninth Circuit on August 16, 2004. Cornejo-Barreto v. Seifert, 379 F.3d 1075, 1088 (9th Cir. 2004)(holding that no habeas review after the Secretary’s determination was allowable under the Rule of Non-Inquiry). However, the second Cornejo-Barreto case has now itself been vacated, as the Ninth Circuit has decided to take up the matter *en banc*. Cornejo-Barreto v. Seifert, No. 02-56605, 2004 WL 2377460 (9th Cir. Oct. 19, 2004).

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<sup>1</sup> United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, adopted by unanimous agreement of the U.N. General Assembly, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/RES/39/708 (1984), entered into force as to the United States Nov. 20, 1994, signed April 18, 1988.

Additionally, Magistrate Judge Dixon also relied heavily on the case of INS v. St. Cyr, 533 U.S. 289 (2001), for two other theories, constitutional avoidance and strict constructionalism, to help decide the question of whether the Secretary's determination would be reviewable by this Court as to Petitioner's claim under the Convention Against Torture. However, there is no authority that this Court could find that allows St. Cyr to be applied in the context of extradition, as opposed to deportation. Because of (1), the uncertainty raised by the recent vacating of the second Cornejo-Barreto case, and (2) the fact that there is no court authority applying St. Cyr to extradition, and (3), the fact that there will be no final order in this case until after the Secretary's determination, this Court feels it is not currently appropriate to address the issue of whether Petitioner may appropriately seek habeas review of the Secretary's determination. See Karsten v. Kaiser Found. Health Plan, 36 F.3d 8, 11 (4th Cir. 1994)(finding that courts should refrain from "solving questions that do not actually require answering in order to resolve the matters before them"). To that end, the Court rejects that portion of Magistrate Judge Dixon's opinion that relies upon dicta from the first Cornejo-Barreto. 218 F.3d 1004 (9th Cir. 2000).

Petitioner will be able to bring his humanitarian concerns to the attention of the Secretary of State, who is charged with appropriately applying the Convention Against Torture, but this Court declines at this time to decide whether Petitioner can appropriately seek habeas review after the Secretary's determination.

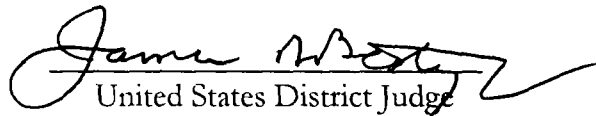
However, this Court will explicitly hold, as Magistrate Judge Dixon's opinion did not, that the Secretary of State must notify Petitioner of the issuance of the surrender warrant in order to give Petitioner adequate time to decide whether to seek additional habeas relief.

In conclusion, for the reasons stated herein, the Court adopts the Magistrate Judge's

Recommendation to the extent that it certifies that Petitioner is extraditable. The Court, however, rejects as dicta the Magistrate Judge's Recommendation, to the extent that it finds habeas review is available after the Secretary of State determines whether to extradite Petitioner, and in turn declines to decide the issue as not ripe. Therefore, it is hereby ordered that Petitioner's petition for writ of habeas corpus [Document #1] is DENIED without prejudice.

The Court notes that Petitioner filed a motion [Document #14] on October 15, 2004, requesting a hearing before this Court in order to determine the status of the Court's review of the Magistrate Judge's Recommendation. Given that the Court has now considered the Magistrate Judge's Recommendation and made a *de novo* determination, Petitioner's motion for a hearing is deemed moot and is therefore DENIED.

This, the 9 day of November, 2004.

  
United States District Judge